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6 Attorneys for Defendant Pamela Zimba

7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 CHRISTINE CHANG, individually and as  
Guardian ad litem for Eric Sun, disabled,

11 Plaintiff,

12 vs.

13 ROCKRIDGE MANOR CONDOMINIUM,  
14 et al.,

15 Defendants.

Case No.: C 07 4005 EMC

**NOTICE OF MOTION/MOTION TO  
DISMISS FIRST AMENDED  
COMPLAINT FOR LACK OF  
SUBJECT MATTER JURISDICTION  
AND/OR FAILURE TO STATE A  
CLAIM UPON WHICH RELIEF CAN  
BE GRANTED AND FOR A MORE  
DEFINITE STATEMENT (FRCP  
12(B)(1), 12(B)(6) AND 12(E))**

16 Date: May 14, 2008

17 Time: 2:30

Courtroom: C

Magistrate Judge: Edward M. Chen

18 Complaint Filed: August 3, 2007

19 TO THE PARTIES TO THE INSTANT ACTION AND THEIR COUNSEL OF RECORD:

20 Notice is hereby given that on May 14, 2008, at the hour of 2:30 p.m., or as soon thereafter  
21 as the matter may be heard, in Courtroom C, located at 450 Golden Gate Avenue, San Francisco,  
22 California, defendant Pamela Zimba will move the Court, per Honorable Edward M. Chen,  
23 Magistrate Judge, for its order pursuant to 28 U.S.C. §1367(c)(3), FRCP 12(b)(1) and 12(b)(6)  
24 dismissing the instant action with prejudice as against her, or, in the alternative, for a more definite  
25 statement pursuant to FRCP 12(e). The said motions will be based upon this Notice, the records  
26 and files of the Court and such other and further matter, either oral or written, as may be submitted  
27 prior to, or during, the hearing.

28 The specific grounds for the defendant's motion are as follow:

1           1.       The Court's February 2008 Order bars plaintiffs' claim for "abuse of process," as  
2 asserted in ¶52 of the First Amended Complaint ("FAC");

3           2.       Plaintiffs' claim against Ms. Zimba for "abuse of process" fails to state a claim on  
4 which relief can be granted.

5           3.       The "abuse of process" claim against Ms. Zimba is time-barred.

6           4.       Plaintiffs' claim against Ms. Zimba for fraud and misrepresentation ("direct fraud")  
7 fails to state a claim on which relief can be granted.

8           5.       As compared to any surviving claim(s) against Ms. Zimba, such federal question  
9 claims as the FAC asserts against other defendants do not satisfy the "same case or controversy"  
10 requirement of 28 U.S.C. §1367(a); the Court should thus dismiss any surviving state law claim(s)  
11 against Ms. Zimba.

12           6.       Any surviving state law claim(s) against Ms. Zimba should be dismissed pursuant  
13 to 28 U.S.C. §1367(c)(2), as they substantially predominate over any federal claims plaintiffs have  
14 asserted.

15           7.       If the Court dismisses plaintiffs' federal question claims, any surviving state law  
16 claim(s) against Ms. Zimba should be dismissed pursuant to 28 U.S.C. §1367(c)(3).

17           8.       If plaintiffs defeat Ms. Zimba's motions to dismiss, as set out hereinabove, they  
18 should be required to amend their pleadings to provide a more definite statement of any surviving  
19 cause of action pursuant to FRCP 12(e).

20 DATED: March 20, 2008

BOORNAZIAN, JENSEN & GARTHE  
A Professional Corporation

21  
22 By: 

23           ANDREW R. ADLER, ESQ.  
24           Attorneys for Defendant  
              Pamela Zimba, Esq.

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**PROOF OF SERVICE BY MAIL**  
**(C.C.P. SECTIONS 1013(a) -2015.5)**

I am employed in the County of Alameda, State of California. I am over the age of 18 years and not a party to the within action. My business address is 555 12th Street, Suite 1800, P.O. Box 12925, Oakland, California 94604-2925.

I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. On the date indicated below, at the above-referenced business location, I sealed envelopes, enclosing a copy of the **NOTICE OF MOTION/MOTION TO DISMISS FIRST AMENDED COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION AND/OR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED AND FOR A MORE DEFINITE STATEMENT (FRCP 12(B)(1), 12(B)(6) AND 12(E)); MEMORANDUM OF POINTS & AUTHORITIES; [PROPOSED] ORDER**, addressed as shown below, and placed them for collection and mailing following ordinary business practices to be deposited with the United States Postal Service on the date indicated below:

Ms. Christine Chang  
341 Tideway Drive, #214  
Alameda, CA 94501  
Tel: 510-769-8232

Plaintiff In Pro Per

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California, on March 20, 2008.



LESLIE HASSBERG